occupation subject to the tax imposed by this Act, a statement, under oath, showing the amount of the tax due by each such person, firm, corporation or association of persons, which statement when filed for record shall operate as a first lien, privilege and mortgage on all of the property of the respective excise, license or privilege tax debtors as the case may be, and said property shall be subject to seizure and sale for the payment of said excise, license or privilege tax due.

"Section 7. Whenever the Supervisor of Public Accounts shall cause the statement provided for in the preceding section to be recorded, he shall give notice to the tax debtor by registered letter of the recordation of such statement, and fifteen (15) days thereafter the said Supervisor of Public Accounts shall cause the sheriff and ex-officio tax collector of said parish to seize and sell for the payment of such excise, license or privilege taxes any property whatsoever belonging to the said tax debtor or debtors, as provided above, which may be found within the jurisdiction of the said sheriff and ex-officio tax collector.

"Section 8. The sheriff and ex-officio tax collector of any parish, when requested by the Supervisor of Public Accounts, is hereby required to seize and sell any property, assets and effects belonging to any person, firm, corporation or association of persons owing the excise, license or privilege tax herein provided for after the recordation of the statement hereinabove provided and required and after the notice hereinabove provided for has been given; and all such seizures and sales shall be conducted in the manner and form now required for the sale of similar property for

taxes and penalties shall be imposed and collected as provided by the general license laws of this State.

"Any and all physical property or assets or things of value belonging to the said tax debtors are hereby declared to be subject to seizure and sale for the payment of the excise, license or privilege tax herein provided for in preference to any and all other claims, liens and privileges.

"Section 9. The payment of the excise, license or privilege tax provided for by this Act shall be in addition to, and shall not affect the liability of the parties so taxed for the payment of, all other state, parochial, municipal, district and special taxes levied upon their real estate and other corporeal property.

"Section 10. Any person who shall intentionally furnish any false information regarding or make any false oath to any report required by this Act shall be deemed guilty of perjury and shall be subjected to all penalties prescribed for said crime.

"Section 11. In computing the amount of tax due under the provisions of Section 3 hereof by each person, firm, corporation or association of persons, the horsepower capacity of the machinery or apparatus operated by such person, firm, corporation or association of persons shall be taken as the brake horsepower of the 'prime mover' or 'prime movers' determined according to the rules and principles of The American Society of Mechanical Engineers.

"Section 12. It is hereby made the duty of the Supervisor of Public Accounts to supervise and enforce

and cause to be enforced the collection of all taxes that may be due under the provisions of this Act, and to that end the said Supervisor is hereby vested with all of the powers and authority conferred by this Act.

"Section 13. All monies collected under the provisions of this Act shall be paid to the State Treasurer as and when received and credited to the General Fund and disbursed according to law.

"Section 14. The cost of auditing, inspection and enforcing this Act shall be borne by the General Fund and the Supervisor of Public Accounts shall withhold from the first sums realized on the collection of the tax levied hereunder a sum not to exceed Twenty-five Thousand ($25,000.00) Dollars per annum.

"Section 15. If any clause, sentence, paragraph, section or part of this Act, shall for any reason, be adjudged by any court of competent jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, section or any part thereof, directly involved in the controversy in which such judgment has been rendered.

"Section 16. The tax levied by this act shall become effective August 1, 1932 and the first return for taxes due hereunder, as provided in Section 6, hereof, shall be made between the first day of August and the first day of September, 1933. In each case, the twelve month period ending July 31st of each year, beginning with the year

1933, shall be the fiscal year for computation of the annual tax imposed by this act.

"Section 17. No municipality, parish or other subdivision of the State of Louisiana shall be authorized to levy any excise, privilege or license tax which it would not have been authorized to levy if this act had not been passed, it being the intention of this act that the tax hereby imposed shall not be repeated or duplicated, in whole or in part, by any municipality, parish or subdivision of the State of Louisiana.

"Section 18. Whenever, under the provisions of Section 1 or Section 2 hereof, a person, firm, corporation or association of persons must include in his or its gross receipts the fair value of electricity furnished to a branch of his or its business the fair value of the electricity furnished to such branch shall be a sum which will represent the amount which said branch would have to pay for said electricity if operating independently and purchasing such electricity from such person, firm, corporation or association of persons.

"Section 19. All laws or parts of laws inconsistent or in conflict herewith are hereby repealed.

Approved by the Governor: June 21, 1932."

In addition to *ad valorem* taxes levied by state, parish and municipal authorities, the business conducted by the appellee in the State of Louisiana is subjected to the following additional license or excise taxes:

SEVERANCE TAX.

Act No. 24 of the 2nd E. S. 1935:

"Section 1. Be it enacted by the Legislature of Louisiana, That for the year 1935, and for each subsequent year, taxes as authorized by Section 21 of Article 10 of the Constitution of 1921, are hereby levied upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells, and other natural deposits.

* * * * * *

"Section 2. Taxes on natural resources severed from the soil or water, as levied by Section 1 of this Act, shall be predicated on the quantity severed and shall be paid at the following rates:

* * * * * *

"8. On gas, one-fifth (1/5th) of one cent (1c) per thousand cubic feet, measured at ten ounce (10 oz.) pressure."

CORPORATION FRANCHISE TAX.

Act No. 10 of the 1st E. S. 1935:

"(5) After determining the correct amount of capital stock, surplus and undivided profits as herein provided, in such form and under such regulations as the Secretary of State may prescribe, and on forms provided by him, the said foreign corporation shall pay a tax for the privilege of carrying on, doing business or the exercising of its charter within this State, at the rate of Two Dollars ($2.00) for each One Thousand Dollars ($1,000.00) on the amount of its capital stock, surplus and undivided profits, determined as herein provided; provided that the minimum tax shall not be less than Ten Dollars ($10.00) in any case."

ADDITIONAL FRANCHISE TAX UPON CORPORATIONS ENGAGED IN THE BUSINESS OF TRANSPORTING NATURAL GAS BY PIPE LINE.

Act No. 92 of 1936:

"Section 1. Be it enacted by the Legislature of Louisiana, That every corporation, domestic or foreign, engaged in the business of transporting natural gas by pipe line in this State, shall, in addition to all other taxes and licenses levied and assessed in this State, pay an additional annual franchise tax for the privilege of exercising their franchises or charters or the continuance of their franchises or charters in this State, an annual tax equal to one percentum (1%) of the gross receipts from the operation of its franchises or charters in this State. Provided, that

as to business passing through, into or out of this State, the gross receipts of any such corporation exercising its franchises or charters in this State, for the purpose of this Act, shall be determined as follows:

"The gross receipts of such corporation over the whole extent of the mileage over which such business is done, within, through and without the State, shall be divided by the total number of miles over which such business is done to ascertain the average gross receipts per mile, and the gross receipts in this State shall be taken to be the average gross receipts per mile, multiplied by the number of miles over which such business is done in this State."

INCOME TAX.

Act No. 21 of 1934:

"Section 6. The tax to be assessed, levied, collected and paid, upon the net income, in excess of Three Thousand ($3,000.00) Dollars, of every corporation shall be computed as follows, viz:

> **Four (4%) percentum upon the amount of said net income; provided that the net income of every corporation shall be presumed to be the same as the entire net income on which the corporation pays a tax to the United States, subject to the exemptions and limitations hereinabove or hereinafter set forth."**

SUPREME COURT OF THE UNITED STATES.

No. 458.—October Term, 1937.

Milton Coverdale, Sheriff and Ex-officio Tax Collector, Appellant, *vs.* Arkansas-Louisiana Pipe Line Company. } Appeal from the District Court of the United States for the Western District of Louisiana.

[April 4, 1938.]

Mr. Justice Reed delivered the opinion of the Court.

The question is whether a state statute imposing a privilege tax on the production of mechanical power contravenes the interstate commerce clause in so far as it is applied to an engine used to supply mechanical power to a compressor which increases the pressure of natural gas and thus permits it to be transported to purchasers in other states.

Act No. 6 of the Regular Session of 1932 of the Louisiana Legislature, with certain qualifications and exceptions not material here, provides for a license tax to be paid by everyone engaged within the State in the business of manufacturing or generating electricity for heat, light or power (Sec. 1), or of selling electricity not manufactured or generated by him or it (Sec. 2). Section 3 provides that every person, firm, corporation, or association, engaged within the State in any business, which uses in the conduct of that business electrical or mechanical power of more than ten horsepower and does not procure all the power from a taxpayer subject to Sections 1 or 2, "shall be subject to the payment of an excise, license, or privilege tax of One Dollar ($1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime mover' or 'prime movers', operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; . . . ."

Appellee is engaged within Louisiana, Arkansas, and Texas, in the business of producing and buying, transporting and selling natural gas. The gas is obtained from the Monroe and Richland fields in Louisiana, and transported through appellee's 20-inch pipe line,

one of the largest in the Southwest, which extends from Sterlington, Louisiana, to Blanchard, Louisiana, where one branch goes west into Texas, and the other north into Texas and Arkansas up to Little Rock. Ninety-six and 6/10 per cent. (96.6%) of the gas transported through this line during the fiscal year ended July 31, 1933, was delivered outside the State of Louisiana.

The natural gas cannot be transmitted through this pipe line for these distances in amounts sufficient to meet the needs of appellee's customers, unless it is delivered into the pipe line at a pressure higher than that at which it comes from the wells. Accordingly, appellee maintains in Louisiana, at the point of intake into the line, its "Munce Compressor Station" where are located ten pumps, or natural gas compressors, which operate to increase the pressure of the gas to the required extent. These compressors are directly connected to ten four-cylinder 1,000 horsepower Cooper Bessemer internal combustion gas burning engines. There are also two 250 horsepower gas burning engines for general power service at the station. The tax is laid on the privilege of operating these twelve gas engines, known as "prime movers,"[1] and is imposed at the rate of $1 per horsepower capacity of the engine—i. e., a total tax of $10,500.

Appellee's complaint, setting forth these facts, was filed in the District Court for Western Louisiana. It prayed that the tax be declared invalid and that the appellant, sheriff, be enjoined from selling appellee's property to enforce payment of $7,316, plus certain penalties and attorney fees, as the balance of the "prime mover tax" due for the year ending July 31, 1933.[2] An *ex parte* temporary restraining order was issued. A statutory three-judge court was convened, and a preliminary injunction granted, 17 F. Supp. 34. The statute was held invalid for the reason, among others, that as applied to this case it imposed an unconstitutional

[1] This term, used in Section 3, *supra*, is not defined elsewhere in the statute. Webster's New International Dictionary (2d ed. unabridged, 1935) p. 1964, contains the following: "**prime mover.** *Mech.* . . . . b An initial source of motive power, as an engine, or machine, the object of which is to receive and modify force and motion as supplied by some natural source, and apply them to drive other machinery, as a water wheel, a water-pressure engine, a wind-mill, a turbine, a tidal motor, a steam engine or other heat engine, etc." As explained by expert witnesses for the appellant, the internal combustion gas engine is a prime mover which converts heat energy, contained in the natural gas as fuel, into mechanical energy, then supplied to and used by the compressor unit.

[2] Appellee alleged that it had paid part of the tax imposed by the statute in order to avoid a forced sale.

burden on interstate commerce. On a rehearing, the court, with one dissent, determined again that it was invalid, with the violation of the commerce clause as the sole basis of decision, 17 F. Supp. 36.[3] After answer and submission of affidavits by both parties, the court granted a permanent injunction, 20 F. Supp. 676. The case was brought here on direct appeal. Judicial Code, §§ 238(3), 266, 28 U. S. C. A. §§ 345(3), 380.

First. The character of the tax act under consideration is clear. It is a revenue measure obtaining funds by levying a privilege tax on those generating or selling electricity in Louisiana. Secs. 1 and 2. Presumably to protect this source of revenue against tax-free competition, section 3,[4] with broad exemptions not assailed here, subjects the users of electrical or mechanical power, not procured from those subject to sections 1 or 2, to a tax of one dollar per annum for each horsepower of capacity of the machinery operated by the taxpayer for the purpose of producing this power.

[3] The first opinion also held the statute invalid in its entirety (on the authority of Union Sulphur Co. *v.* Reid, 17 F. Supp. 27), as a property tax laid at a rate prohibited by the state constitution, and as a denial of due process in providing for collection without any review of the action of the state supervisor of public accounts. After the decision in State *v.* H. L. Hunt, Inc., 182 La. 1073, 162 So. 177, holding the tax a license rather than a property tax, consonant with both the state constitution and Fourteenth Amendment, the District Court granted a rehearing. The second opinion conceded the general validity of the act, but held it an undue burden on interstate commerce as applied to appellee.

[4] Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license or privilege tax of One Dollar ($1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the "prime mover" or "prime movers", operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; provided that any user of power securing all or any part of the power required in the conduct of the business or occupation of such user from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall not be liable for the tax imposed by this Section 3, or for a greater tax under this Section 3, as the case may be, because of the employment of stand-by power facilities by such user during periods of failure of the supply of purchased power; and provided further that any person, firm, corporation or association of persons the principal use of whose electric facilities is the generation of electricity for sale, shall not be subject to an additional tax under this Section 3 on the horsepower capacity of any machinery or apparatus used in the generation of electricity; and provided further that in computing the tax

The state court has held that section three, here in question, does not lay a tax on those who own the machines but on those who use them in the conduct of their business, *State* v. *H. L. Hunt, Inc.*, 182 La. 1075, 1079-1080, a decision accepted, so far as the incidence of the tax is concerned, as a matter of local law conclusive on us. *St. L. & S. W. R. Co.* v. *Arkansas*, 235 U. S. 350, 362; *Storaasli* v. *Minnesota*, 283 U. S. 57, 62. We regard the tax as one upon the privilege of producing the power.

Second. The language of the state statute makes it quite certain that this privilege tax falls alike on those engaged in interstate or in intrastate commerce, or in both. While a privilege tax by a state for engaging in interstate business has frequently met the condemnation of this Court as a regulation of commerce,[5] privilege taxes for "carrying on a local business," even though measured by interstate business, have been sustained. *American Mfg. Co.* v. *St. Louis*, 250 U. S. 459; *Ficklen* v. *Shelby County Taxing District*, 145 U. S. 1;[6] cf. *Western Live Stock* v. *Bingaman*, 303 U. S. —, No. 322, October Term 1937, decided February 28, 1938. The present case falls well within the line of state tax authority.

Taxation by the states of the business of interstate commerce is forbidden only because it is deemed an interference with that commerce, the uniform regulation of which is necessarily reserved to the Congress. *Minnesota Rate Cases*, 230 U. S. 352, 400. As this source of revenue, even if treated in a non-discriminatory manner, is withdrawn from local reach by inference from the delegated grant, the exemption of those engaged in interstate commerce from the taxation others bear should not be extended beyond the necessity of keeping that commerce free from interference. Consequently, property taxes on the instrumentalities or net income

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imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill or a mill for grinding sugar-cane or producing raw sugar, or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or motivating any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air.

[5] Cooney v. Mountain States Tel. Co., 294 U. S. 384, 392, and cases cited in note four; Puget Sound Stevedoring Co. v. Tax Com., 302 U. S. 90; Fisher's Blend Station v. State Tax Com., 297 U. S. 650; Sprout v. South Bend, 277 U. S. 163, 170, 175.

[6] But see Crew Levick Co. v. Penn., 245 U. S. 292, 296.

taxes on the proceeds of interstate commerce are upheld. *Cudahy Packing Co.* v. *Minn.*, 246 U. S. 450; *United States Glue Co.* v. *Oak Creek*, 247 U. S. 321.

Privileges closely connected with the commerce may be regarded as distinct for purposes of taxation. So, local privilege taxes on storage in transit, compressing or dealing in cotton, already moving in its interstate journey from plantation to mill, are validated as imposed upon operations in connection with a commodity withdrawn from the transportation movement. *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 21; *Chassaniol* v. *Greenwood*, 291 U. S. 584; cf. *Minnesota* v. *Blasius*, 290 U. S. 1. And similar taxes are upheld for the privilege of mining ores or producing gas, notwithstanding the "practical continuity" of the taxed productive operation and the interstate movement. *Oliver Iron Co.* v. *Lord*, 262 U. S. 172; *Hope Gas Co.* v. *Hall*, 274 U. S. 284. In *Utah Power and Light Company* v. *Pfost*, 286 U. S. 165, an Idaho statute taxing the generation of electricity at so much a kilowatt hour was upheld because a difference was perceived between the conversion of the mechanical energy of falling water into electrical energy and the transportation of the latter. The tax here imposed on the operation of the machinery is of the same type.

The power used by the appellee is obtained from internal combustion engines which transform the potential energy of natural gas into mechanical power, transmitted by piston and piston-rod from the combustion chamber of the engine to the compression chamber of the compressor. While the engine and compressor units are assembled on a common bed plate, their functions are thus seen to be as completely separate as if they operated through belting. The engine is the "prime mover" of the tax act, producing power to drive the compressor. While the use of the engine for the production of power synchronizes with the transmission of that power to the compressor, production occurs prior to transmission. It is just as much local as the generation of electrical power.

Helson v. *Kentucky*, 279 U. S. 245, *State Tax Commission* v. *Interstate Natural Gas Co., Inc.*, 284 U. S. 41, and *Cooney* v. *Mountain States T. & T. Company*, 294 U. S. 384, are pressed upon us as controlling authorities for the invalidation of the tax. We think they belong to the category of cases which construe the state tax acts involved as taxes on interstate commerce and its in-

strumentalities rather than on operations closely connected with but distinct from that commerce. In the *Interstate* case and the *Cooney* case taxes levied on the business of engaging in interstate commerce were held invalid. Likewise, in the *Helson* case, this Court concluded that the tax on gasoline brought into the state and used on an interstate ferry was analogous to a tax on the use of the ferry itself in transit and therefore within the rule prohibiting state taxes on commerce. A narrow distinction in fact exists between the tax held invalid in the *Helson* case and the valid tax considered in *Nashville, Chattanooga and St. Louis Ry. Co.* v. *Wallace,* 288 U. S. 249, where a tax on gasoline brought into the state, stored and then used to drive engines in interstate transportation, was held valid. The storage and withdrawal was an intrastate, taxable event. See also *Edelman* v. *Boeing Air Transport,* 289 U. S. 249, 252; *Gregg Dyeing Co.* v. *Query,* 286 U. S. 472, 479.

Third. To determine whether this challenged state tax enactment is invalid as an interference with interstate commerce under the decisions of this Court, the connection of the privilege taxed with interstate commerce has been considered. Other factors also show that the tax here does not interfere with interstate commerce. The tax is without discrimination in form or application as between inter- and intra-state commerce and it cannot be imposed by more than one state. The course of interstate commerce is clogged by taxes designed or applied so as to hamper its free flow. Section three, however, bearing equally on all use, is only complementary to the taxes of sections one and two. *Henneford* v. *Silas Mason Co.,* 300 U. S. 577, 584. It bears generally on all use of power and is not discriminatory. It obviously adds to the cost of the interstate commerce. But increased cost alone is not sufficient to invalidate the tax as an interference with that commerce. *Western Live Stock* v. *Bingaman,* 303 U. S. at —, *supra.*

It was held by the District Court that this is a tax which may be levied by other states and so is invalid, and that a state's desire to save gas for its citizens may induce it to raise the privilege tax to prohibitory rates. It is true that each state through which a pipe line passes could lay a tax on the use of engines for the production of power but that would not be multiple taxation "merely because interstate commerce is being done," as discussed in *Western Live Stock* v. *Bingaman,* 303 U. S. at —, *supra,* and the au-

thorities there cited. It would not be a tax on the same activity, either in form or in substance. Like a property tax on the pipes or equipment in different states, it would be a different tax, on a different and wholly separate subject matter, with no cumulative effect caused by the interstate character of the business. It would not be multiple taxation for each state to tax the "booster station" *ad valorem* as property. Neither is it prohibited multiple taxation to have the possibility of other privilege taxes on the production of power. It is length of line, not interstate commerce, which makes another tax possible.

The decree of the District Court is

Reversed.

Mr. Justice McReynolds is of the opinion the decree should be affirmed.

Mr. Justice Cardozo took no part in the consideration or determination of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.